

NOTICE TO COUNSEL CONCERNING DISCOVERY

You have received notice of the scheduling of a Preliminary Pretrial Conference. Although the Court strives to set that conference as early in the case as practicable, sometimes several months elapse between the filing of an answer or other responsive pleading and the date of the Preliminary Pretrial Conference. The Court has become concerned that, in many cases, the parties seem not to be aware that they can conduct discovery prior to the Preliminary Pretrial Conference.

Fed.R.Civ.P. 26(d) provides generally that "a party may not seek discovery from any source **before the parties have conferred as required by Rule 26(f).**" After that conference has been held, the parties are free to begin discovery. The conference required by Rule 26(f) is the conference of counsel which precedes the Preliminary Pretrial Conference, and **not** the Preliminary Pretrial Conference, which is conducted under Rule 16(a).

Notwithstanding Rule 26(d), some parties have delayed commencing discovery until after the Preliminary Pretrial Conference has been held. Please be advised that the discovery cutoff date in this case will be established based upon the amount of time which has been and will be available to the parties to conduct discovery, including time which has been available prior to the Preliminary Pretrial Conference. Please plan your discovery accordingly.